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FILE: WAC 03 092 50166 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 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.

*for Michael T. Kelley*  
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 The director's decision will be withdrawn and the matter remanded for entry of a new decision consistent with this opinion.

The petitioner, a provider of microfilm systems and document conversion services, seeks to employ the beneficiary as an 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 basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner set forth the duties of the proposed position in its December 18, 2002 letter of support. According to this letter, the beneficiary would provide services in four areas: accounting, tax, attestation (auditing), and consultation. Accounting services, which will occupy sixty percent of the beneficiary's time, would consist, in summary, of the following: preparing cash flow statements, projecting cash flow expenditures, budgetary projections, financial analysis, inventory control analysis, financial statement analysis and preparation, and development of an accounting software system. Tax services, which would occupy five percent of the beneficiary's time, will consist, in summary, of the following: researching and explaining new federal and state tax policies, and assisting in tax audits. Attestation (auditing) services, which would occupy twenty-five percent of the beneficiary's time, will consist, in summary, of the following: auditing the company's financial statements, compliance auditing, and operational auditing. Consultation services, which would occupy ten percent of the beneficiary's time, will consist, in summary, of the following: quality control (engagement performance and acceptance and continuance of clients and engagements) and management oversight.

In finding that the proposed position was not a specialty occupation, the director noted that although some of the duties of the proposed position reflect those performed by accountants, many of them were those of bookkeepers and accounting and auditing clerks. The director also concluded that the petitioner's business would not utilize the beneficiary solely in the capacity of an accountant or auditor exclusively in the review, analysis, and reporting of the petitioner's accounting records.

The AAO agrees with counsel that the proposed position is in fact that of an accountant. While some of the duties may reflect those of bookkeepers or accounting and auditing clerks, the majority of the duties are those normally performed by an accountant. It is also noted that the petitioner employs an office manager who handles the bookkeeping duties, which would free the beneficiary to perform accountant-level duties. Also, the auditing services to be performed by the beneficiary require independent analysis associated with the attainment of a four-year degree.

Therefore, the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

However, the petition may not be approved at this time, as the beneficiary does not appear qualified to perform the duties of the specialty occupation. As the director did not address this issue, the petition will be remanded for further action.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order 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 first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary earned his degree abroad, so she does not qualify under this criterion.

The second criterion requires a showing that the beneficiary earned a foreign degree determined to be equivalent to a United States baccalaureate or higher degree. The AAO notes that the petitioner submitted an educational evaluation from Education Educators International, Inc. (EEI) in the initial submission. The EEI evaluator determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in business administration from an accredited institution of higher education in the United States. However, after a review of the beneficiary's transcripts it appears as though he enrolled in only five accounting classes during this course of study. As such, the beneficiary appears unqualified under the second criterion.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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;
- (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 evaluation does not qualify under the first criterion. As noted previously, it appears that the beneficiary enrolled in only five accounting courses while obtaining his degree.

No evidence has been submitted, nor has the petitioner contended, that the evaluation satisfies the second criterion (CLEP or PONSI results).

Nor does the evaluation satisfy the third criterion, as it appears that the beneficiary enrolled in only five accounting courses while obtaining his degree.

The fourth criterion requires 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 that have achieved a certain level of competence in the specialty. No evidence has been submitted to satisfy this criterion.

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 occupation<sup>1</sup>;

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<sup>1</sup> *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

- (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, 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 record contains no information to satisfy sections (i), (ii), (iii), (iv), or (v). Thus, the fifth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D) has not been met.

Therefore, none of the five criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) have been satisfied. The petitioner has not proven that the beneficiary is qualified to perform the duties of a specialty occupation.

As the director has not addressed this issue, the decision will be withdrawn. The petition will be remanded for the director to enter a new decision. The director may afford the petitioner reasonable time to provide evidence relevant to the issue of the beneficiary's qualifications for the position, as well any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's May 21, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.