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U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 268 50353 Office: TEXAS SERVICE CENTER Date: JUL 08 2008

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.

for Michael T. Foley
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 pediatric medical practice that seeks to employ the beneficiary as a financial manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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 financial manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 30, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing required financial reports and quarterly payroll returns; reviewing cash flow and assessing the petitioner's present and future financial status; preparing budgets and financial statements; handling accounts payable and accounts receivable; and preparing all payroll. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration with a major in accounting, finance, or an equivalent thereof.

The director found that the proffered position, which entails the duties of an administrative assistant and/or manager, was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a financial manager, and is not an administrative assistant or financial clerk position. Counsel states further that, as stated in the petitioner's August 30, 2002 letter, the petitioner normally requires a baccalaureate degree or its equivalent for the proffered position.

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 turns first to 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is primarily that of a financial manager, an occupation that would normally require a bachelor's degree in finance, accounting, economics, or business administration. In its *Handbook*, 2004-2005 edition, at pages 39-40, the DOL describes the job of a financial manager, in part, as follows:

Controllers direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income tax statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments.

Financial managers play an increasingly important role in mergers and consolidations, and global expansion and related financing. These developments require extensive, specialized knowledge on the part of the financial manager to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some firms contract out all accounting and financial functions to companies that provide these services.

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management.

The record reflects that the petitioner, which is a medical practice, has six employees and a gross annual income of \$372,310. The petitioner has not demonstrated that it requires the services of a financial manager who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced financial planning duties involving mergers and consolidations, global expansion and financing, or that the position requires an individual with a knowledge of sophisticated financial planning techniques normally associated with the duties of a financial manager. Rather, the job duties primarily combine the duties of a bookkeeper and an administrative assistant. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for bookkeeper and administrative assistant jobs.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that, as stated in the petitioner's August 30, 2002 letter, the petitioner normally requires a degree or its equivalent for the proffered position. The record, however, does not contain any evidence of the petitioner's past hiring practices, and, therefore, the petitioner has not met its burden of proof in this regard. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director also found that the beneficiary was not qualified for the proffered position because the beneficiary's education and job experience were not equivalent to a baccalaureate degree in a related specialty. On appeal, counsel states, in part, that the record contains an evaluation from [REDACTED] Ph.D., who concludes that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration with a concentration in accounting. As stated above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for administrative assistant and bookkeeper positions. Most administrative assistants and financial clerks are required to have at least a high school diploma. In this case, the record contains evidence that the beneficiary has completed 100 hours of study in accounting at a vocational institution that is not regionally accredited in the United States, and has several years of related job experience. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.