

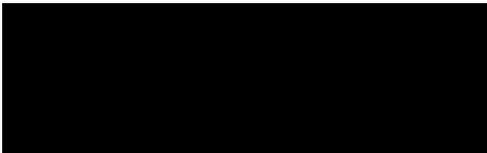
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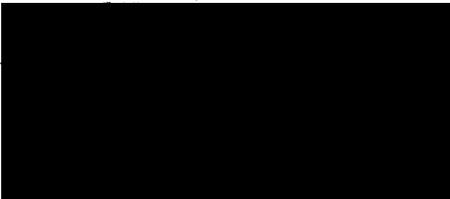


FILE: WAC 03 135 53637 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

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

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 provides staffing services. It 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 an 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 compiling and analyzing financial information to prepare entries to accounts; preparing monthly aging of accounts receivables, month and year-end closing entries, and monthly and annual budgets and cost analysis reports; analyzing financial information detailing assets, liabilities, and capital. The beneficiary will prepare, at the end of the accounting year and at any time during the year, the balance sheet, profit and loss statement, budget report, cost analysis report, projected sales and profitability report, and these reports will be submitted to management and the independent CPA firm to summarize current and projected finances. The beneficiary will audit the company's financial records and coordinate with an independent CPA firm to determine tax liability and identify potential tax issues. The petitioner's March 14, 2003 letter stated that a candidate for the proffered position must possess a "bachelor's degree in accounting, finance[,] or business administration, and have at least six months of experience as an accountant. The petitioner's September 19, 2003 letter stated that a candidate must possess a bachelor's degree in accounting.

The director determined that the proffered position is not a specialty occupation. The director stated that the proposed position resembles the duties of bookkeepers, accounting, and auditing clerks, and payroll and human resources clerks as these occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). According to the director, the *Handbook* explains that these occupations do not require a baccalaureate degree.

On appeal, counsel states that the proposed position is a specialty occupation under the *Handbook* and the *Dictionary of Occupational Titles (DOT)*. Counsel maintains that the beneficiary's duties are complex, requiring the knowledge associated with a bachelor's degree in order to perform them. Counsel states that the beneficiary will replace an employee who holds the educational equivalent to a bachelor's degree in business administration with a concentration in accounting, and is being promoted to operations manager.

Upon review of the record, the petitioner has not established that the proffered position is 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 *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 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 compile and analyze financial information in order to prepare entries to accounts; prepare monthly aging of accounts receivables, month and year-end closing entries, and monthly and annual budgets and cost analysis reports; analyze financial information detailing assets, liabilities, and capital; and prepare, at the end of the accounting year and at any time during the year, the balance sheet, profit and loss statement, budget report, cost analysis report, projected sales and profitability report; audit the company's financial records and coordinate with an independent CPA firm to determine tax liability and identify potential tax issues. As shown by the *Handbook*, these duties are performed by bookkeeping, accounting, auditing, and financial clerks who are responsible for accounts payable and receivable, the profit and loss statement, financial statements, preparing reports and summaries for supervisors and managers, updating and maintaining accounting records, and verifying records of transactions posted by other workers.

The *Handbook* indicates 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.

Based on the above discussion, 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 job postings do not satisfy 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. Brinks Home Security is different in nature from the petitioner, a staffing organization; The Search Firm represents a healthcare company; Institute for Urban Family Health is a healthcare company; Corinthian Colleges, Inc. is an educational institution; Princeton Search Group represents an educational institution; and Lutheran Theological Seminary is a religious organization. No information is provided about the employer seeking an accountant for the US-PA-Pittsburgh area. For these reasons, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence shows that the proposed position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that the beneficiary's duties are performed by bookkeeping, accounting, financial, and auditing clerks, which are occupations that do not require baccalaureate-level education.

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

No evidence satisfies 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 *Handbook* discloses that 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.