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U.S. Citizenship
and Immigration
Services

D2



FILE: EAC 03 246 51386 Office: VERMONT SERVICE CENTER Date: MAR 20 2008

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a chain of fast food restaurants. It seeks to employ the beneficiary as an accountant and to classify him 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 record did not establish that the proffered 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.

As provided in 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 thereto; (4) the director's decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a company organized in October 2000 that owns and operates multiple Subway restaurants in suburban Maryland, and also manages other fast food restaurants. In Form I-129 the petitioner stated that it had 25 employees and gross annual income of more than \$900,000 in 2002. In a letter accompanying Form I-129 the petitioner's president asserted that the company's rapid growth necessitated the employment of a full-time in-house accountant, a function that had previously been outsourced. According to the petitioner, the accountant would be responsible for analyzing financial information and preparing financial reports, entering financial information into general ledger and other accounts, documenting business transactions, analyzing assets, liabilities, and capital, preparing balance sheets, profit and loss statements, and other reports to summarize the company's financial position, auditing contracts, orders and vouchers, preparing pre-settlement reports on prospective transactions, establishing and operating accounting and accounting control procedures in the company, devising and implementing a manual or computer-based system for general accounting, running the payroll for all employees, overseeing all state and federal tax obligations, and implementing an internal audit system. The petitioner asserted that the beneficiary was qualified to perform the services of the job because he is a chartered accountant and certified management accountant in his native Sri Lanka and has worked as an accountant in Sri Lanka and the United Arab Emirates for nearly 20 years.

In response to the request for additional evidence, the petitioner provided a more detailed description of the proffered position's duties. According to the petitioner, the accountant would be responsible for:

- Detailing assets, liabilities, costs of goods and sales, and preparing (a) weekly reports for transmittal to franchise headquarters detailing sales of goods and costs for each restaurant, (b) daily, weekly, monthly, and quarterly financial reporting packages and annual financial statements together with schedules to facilitate the external audit and show the current and projected financial position, and (c) a monthly analysis of each restaurant.
- Negotiating with suppliers on prices, discounts, extended credit terms, etc. and auditing supplier contracts prior to settlement.
- Preparing and submitting quarterly payroll taxes and other reports required by law, as well as weekly payroll for all employees.
- Preparing and reporting federal and state income taxes and advising management on strategies to minimize tax liabilities.
- Identifying, documenting, and implementing an internal control system and compliance.
- Analyzing past records of each restaurant, projecting future revenues and expenses, and doing budget variance analysis for management.
- Monitoring the net worth of the group and preparing new worth statements for future acquisitions. Interacting with banks and lending institutions for favorable financing terms, evaluating potential acquisitions or joint ventures, developing business plans and financial models for new business, identifying the best financing mix, and obtaining financing.
- Implementing a proper credit control system by introducing a credit policy, handling accounts receivable and payable, monitoring bank accounts, and maintaining financial records.
- Designing and implementing accounting methods for inventory control, reviewing supply orders from each restaurant manager.
- Performing in-house audits for all the restaurants and reporting to management.
- Designing, setting up and maintaining accounting software to monitor financial and accounting activity of the group.
- Preparing annual tax returns of key employees.

According to the petitioner the accountant would be assisted by an accounting clerk already in the company's employ.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). While recognizing that the position did encompass some accounting procedures, the director stated that the job duties also included bookkeeping and administrative functions. The director determined that the petitioner failed to establish that the proffered position was so complex or unique that it could only be performed by an individual with a specialty degree. The director concluded that the position did not meet the statutory definition of a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel asserts that ten of the twelve listed job duties of the proffered position could only be performed by an accountant, while conceding that duties 2 and 8 on the list could be performed by the petitioner's accounting clerk. Counsel points to the previously submitted copy of an employment contract between the petitioner and the beneficiary, asserting that the duties described therein are those of an accountant and the compensation package is consistent with an accountant position. Counsel also cites the previously submitted letter from an accountant stating that he had provided accounting services to the petitioner for three years, but that the petitioner's growth now called for an in-house accountant. Lastly, two letters were submitted from other Subway restaurant owners declaring that they need the services of an accountant.

The petitioner has not established that it will employ a full-time in-house accountant. The record contains little evidence as to the scale and complexity of the petitioner's business operation. Though the petitioner's president asserts that he owns multiple subway franchises, manages several others, and has 25 employees, there is no documentation in the file to support these claims. In the director's request for additional evidence the petitioner was specifically requested to submit documentation highlighting the scope of its business enterprise(s) in order to substantiate the duties of the proffered position. Among other items the petitioner was asked to provide brief job descriptions of its other key positions, including job titles, duties, and educational requirements, and how many individuals occupied those positions. No such evidence was submitted, however, showing how many Subway restaurants the petitioner owns or manages and how many employees it has. As far as the record shows, the petitioner's business consists of just one Subway restaurant in Wheaton, Maryland. Simply going on record without supporting

documentation does not satisfy the petitioner's burden of proof. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972).

Thus, the record fails to establish that the petitioner's business is of such a scale and complexity that it will employ a full-time accountant. While the proffered position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. Though the petitioner asserts that it already employs an accounting clerk, the AAO agrees with the director that bookkeeping and related duties are a major component of the proffered position as well. Considering the lack of documentation substantiating the scale of the petitioner's business operations, without which it is impossible to determine whether the beneficiary would actually be performing the services of an accountant, the AAO concludes that the proffered position most closely accords with the *Handbook's* description of bookkeeping, accounting, and auditing clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

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. They also correct or note errors for accountants or other workers to adjust.

Handbook, 2004-05 edition, at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping or accounting clerk position. The proffered position, therefore, does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel cites the two letters from other Subway restaurant owners in suburban Maryland as evidence that accountants with bachelor's degrees in that specialty are routinely employed by Subway restaurants. Neither owner clearly states, however, that he employs a full-time in-house accountant akin to the proffered position in the instant case. One letter, dated January 2, 2004, is from an owner claiming to own a chain of Subway restaurants, though he only identifies one locale, who states that "[i]t is my opinion that the job duties of an in-house accountant for a chain of Subway restaurants . . . [require] a bachelor's degree or its equivalent in accounting." Such a degree, according to the owner, "is a standard minimum requirement for similar positions in this industry." The second letter, dated January 5, 2004, is from the owner of a single Subway restaurant who states that "[w]e have an outside accountant to provide accounting services for the restaurant." The owner goes on to state, in wording almost identical to the first letter, that in his opinion the job duties of an accountant for a Subway restaurant require a bachelor's degree or its equivalent in accounting, and that such a degree "is a standard minimum requirement for an accountant providing services for these type[s] of restaurants." Thus, the first owner did not state that he employed any accountant, while the second owner stated that he employed an outside (and presumably part-time) accountant. The first owner claims to own a chain of subway restaurants but, like the owner in the instant petition, has provided no evidence of more than a single restaurant. Neither owner provides much, if any, information about what duties an accountant actually performs in their restaurant(s). Furthermore, two letters do not establish an industry standard. Based on the foregoing analysis, the AAO concludes that the subject letters do not establish that a bachelor's degree in accounting is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in accounting, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. The petitioner asserts that outside accounting services have heretofore been provided by a certified public accountant (CPA) with a bachelor of science in accounting from the University of Maryland. The record contains conflicting evidence, however, as to exactly who provided outside accounting services to the petitioner during its first three years of operation. In its response to the request for additional evidence, dated November 24, 2003, the petitioner stated that it had changed accounting firms three times. This information is inconsistent with that provided in a letter of the same date from a certified public accountant (CPA) indicating that his accounting firm had provided the petitioner's accounting services uninterrupted since 2000. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth

lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.* The AAO concludes that the record does not establish that the petitioner normally requires a bachelor's degree in accounting or its equivalent for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in accounting or a related field. Based on the documentation of record, the AAO is not persuaded that the duties of the position could not be performed by an experienced bookkeeping or accounting clerk with a sub-baccalaureate level of knowledge in accounting or a related specialty field.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.