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U.S. Citizenship
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Services

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MAY 10 2005

FILE: WAC 03 261 50620 Office: CALIFORNIA SERVICE CENTER Date:

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:
[Redacted]

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 a corporation that specializes in underground installation, plumbing works, and maintenance of sewer and main water lines. In order to employ the beneficiary as an accountant, the petitioner 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 proffered position met the requirements of a specialty occupation. Referencing an excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director determined, in part, that, as described in the record of proceeding, "the duties to be performed by the beneficiary are best compared with the duties of bookkeeping, accounting/auditing clerks, and payroll clerks, all of which are occupations that do not require a baccalaureate degree as a minimum entry-level requirement."

On appeal, counsel contends that the evidence of record establishes that the petitioner is proffering an accountant specialty-occupation position.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with its addendum, and counsel's brief.

The first issue to be addressed is the failure of the evidence to establish a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner relies chiefly upon its descriptions of the proposed duties and the letters provided by a certified public accountant (CPA) and a professor of accounting and MIS (management information systems) from the California State University at Northridge (CSUN). Both of these experts opined about the educational credentials required for the proffered position, on the basis of the information that the petitioner presented about the position in its August 28, 2003 letter of support that was submitted with the Form I-129.

The AAO has reviewed and considered the full text of that August 28, 2003 letter, as well as all of the other evidence presented by counsel and the petitioner. The director provided the following generalized summary of the duties that the letter presents in approximately four and one-half pages:

1. Accounting Services, approximately 60% of the beneficiary's time, including:
 - preparing cash flow projections;
 - carrying out budgetary projections;
 - engaging in financial statement analysis and preparation;
 - preparing profit and loss statements and balance sheets;
 - and designing, developing, and modifying a computerized accounting software system.
2. Tax services, approximately 5% of the beneficiary's proposed duties, including:
 - researching and explaining new IRS policies and their consequences;
 - researching and being familiar with new state of California tax policies;
 - and ascertaining and assisting in any IRS and state audits.
3. Attestation (auditing) services, approximately 25% of the beneficiary's proposed duties, including:
 - financial statement audit[;]
 - compliance audit[;]
 - and operational audit.
4. Finally, ten percent of the beneficiary's time will be spent providing consultation services, including:
 - setting up a system of quality control, and
 - overseeing management in ensuring [that] daily operations will be free of conflicts of interest.

The CPA and the CSUN professor both based their opinions upon the August 28, 2003 letter's complete description of the proposed duties. The AAO accepted these persons as experts on accounting and weighed their opinions accordingly.

The AAO agrees with the experts' statements to the effect that accountant positions may be found throughout the spectrum of business types and sizes, and the AAO has not considered the size or the nature of the petitioner business as factors that preclude the possibility that the petitioner could have a need for a specialty-occupation accountant position. On the other hand, the AAO finds no evidentiary support for the proposition, with which the director concurred, "that all businesses require an accountant to make sure that practices are in accordance with general[ly] accepted accounting principles."

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. For an accounting position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

Upon consideration of all the information presented by the petitioner and its experts, the AAO finds that the petitioner has established that the proffered position is one which normally requires the application of some knowledge of accounting, but *not* that the requisite knowledge is that of at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on accounting duties as presented in the current, 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438).

The totality of information in the aforementioned sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accounting clerks. This statement (*Handbook*, at 428) illustrates the fact that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

The AAO finds that the evidence of record about the proffered position and its duties does not identify the position as one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty. Also, to the extent that it is described in the record, the proffered position does not comport

with any occupation addressed in the *Handbook* that would be cognizable as a specialty occupation under the relevant CIS regulations.

The CPA who wrote in support of the petition opined that the job duties “were accounting related and[,] therefore, by definition, must be carried out by a degree holder in Accounting, Business Administration or Finance.” Similarly, the CSUN professor opined that a university degree “in such areas as Accounting, Business, Administration, or Finance” would be “sufficient to begin working as an Accountant in light of the individual’s exposure to theoretical concepts in such areas as Accounting, Business Administration, Finance, Management or in related areas.” The CSUN professor also defined an accountant as one who holds one of these three college-level degrees (at page 2, paragraph 3 of her letter). In the same vein, the petitioner’s job advertisements in the record specified as the required educational credential a “Bachelor’s Degree in Business Administration, Accounting, or related [field].”

The fact that the petitioner and its experts identify as an acceptable educational credential a bachelor’s degree in business administration, with no specific concentration, confirms the lack of evidentiary support for a favorable finding under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor’s degree, or the equivalent, in a specific specialty closely related to the position’s duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor’s degree, in a specific specialty, that is common to the petitioner’s industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor’s degree in a specific specialty.

The record does not include any submissions from firms, individuals, or a professional association attesting to routine recruitment and hiring practices.

As already indicated, the two expert letters in support of the petition are not evidence of a requirement for a degree in a specific specialty. Therefore, they are not relevant to the instant criterion.

The advertisements from other employers are too few to establish an industry-wide practice. Moreover, the information about both the proffered position and the advertised positions is insufficient for a meaningful comparison between them, and, in particular, between the proffered position and any advertised positions whose acceptable degrees are limited to at least a bachelor's degree in accounting, business administration with a concentration in accounting, or a related specialty.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Here the evidence of record, including the experts' letters, does not demonstrate such complexity or uniqueness. In fact, by attesting that a bachelor's degree in business administration provided a sufficient educational background, both of the experts confirmed that the proffered position is not so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. See the discussion above with regard to the experts' opinions and the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A).

As the petitioner has not attempted to establish a history of normally requiring at least a baccalaureate degree or its equivalent in a specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. By recognizing a generalized bachelor's degree in business administration as an acceptable degree, the petitioner and its experts precluded qualifying the proffered position under this criterion: as reflected in the precedent decision *Matter of Michael Hertz Associates*, already discussed, CIS does not recognize a generalized bachelor's degree in business administration as indicative of a specialty occupation.

Beyond the decision of the director, it is noted that the petitioner has not established that the beneficiary is qualified to serve in an accountant specialty occupation in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

The educational equivalency evaluation rendered by International Credential Evaluations, Inc. only establishes that the beneficiary has obtained a foreign degree that is equivalent to a U.S. baccalaureate degree in business administration. This is not a degree that qualifies a person to serve in an accountant specialty-occupation position. There is no evidence in the record to elevate that U.S.-degree equivalent to a degree in accounting or to a bachelor of business administration with a concentration in that specialty: there are no evaluations of the beneficiary's experience by officials authorized by a U.S. college or university to grant college-level credit for

training or experience, as required by 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(I). For this reason also, the petition must be denied.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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