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U.S. Citizenship
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Services

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FILE: WAC 04 078 52693 Office: CALIFORNIA SERVICE CENTER Date: OCT 04 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 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 described variously as a medical laboratory, a medical billing office, and a profile services company that seeks 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 because the petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel files a brief.

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 January 9, 2004 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: auditing financial statements; preparing and compiling financial statements, projections, payroll, tax and budget documents; analyzing financial information and preparing financial reports; preparing balance sheets, profit and loss statements and other reports to summarize the current and projected financial position for the company; preparing income tax documents, including federal, state and local tax returns; examining accounts and records and computing taxes owed; auditing contracts, orders and vouchers of all company expenses and preparing reports to substantiate individual transactions; establishing, modifying and documenting implementation of accounting control procedures; interpreting budgets to management and advising management on matters, such as effective use of resources and assumptions underlying budget forecasts; and analyzing past and present financial operations, trends and costs, estimated and realized revenues to prepare budget and project future revenues and expenses. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the petitioner did not establish that the proffered position was a specialty occupation. 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 that the proffered position meets the criteria for classification as a specialty occupation. Counsel also states that there are no inconsistencies in the evidence presented by the petitioner, and that the petitioner has established its need for an accountant, despite not having a large organizational structure.

The AAO notes that a position as an accountant is generally a specialty occupation. The issue that remains, however, is whether the petitioner will employ the beneficiary in the specialty occupation. Upon review of the record, the petitioner has not established that it will employ the beneficiary in an accounting position.

The director determined that he needed additional evidence to establish that the position was a specialty occupation, and requested a more detailed job description than had been provided in the letter of support, a more detailed description of the petitioner's business, copies of the petitioner's federal and state income taxes and its quarterly wage reports, and the petitioner's organizational chart. In response to the director's request for evidence, counsel submitted a copy of the petitioner's business license, which gives the business description as "medical billing office." Counsel's letter repeated the description of the petitioner's business from the petitioner's letter of support, which stated that the petitioner is a medical laboratory offering a wide range of diagnostic tests. Counsel also repeated the position description, without providing any more detail. Counsel stated that the petitioner could not submit copies of its income tax returns and quarterly wage reports because the previous owner did not make them available. The AAO notes that the sections dealing with the

number of employees, and gross and net annual income in Part 5 on page 2 of the Form I-129 were left blank. Counsel also did not provide an organizational chart.

There is no evidence in the record regarding the petitioner's number of employees or income, despite the director's request for this information. 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)). In addition, the AAO notes that there is no evidence regarding the nature of the petitioner's business, beyond the three conflicting descriptions of the business as a medical laboratory, a medical billing office and a profile services company. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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 Department of Labor's *Occupational Outlook Handbook (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* for its information about the duties and educational requirements of particular occupations. Counsel states that the beneficiary's duties are those performed by an accountant. The *Handbook* discloses that the proffered position's duties do not rise to the level of an accountant. The *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work.

Other responsibilities include budgeting, performance evaluation, and cost and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Many of the duties described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. Since the petitioner did not respond to the director's request for evidence regarding its organizational structure, it did not establish that the beneficiary would be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, and regulatory agencies. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

The *Handbook* further states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

The record shows that the petitioner has an unclear business purpose, and an unstated number of employees and gross annual income. Given this context, the record does not establish that the petitioner will employ the beneficiary as an in-house accountant. While the size of the petitioning entity is not relevant in determining whether a position qualifies as a specialty occupation, the level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for a smaller income differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Accordingly, the petitioner has not established 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner did not submit any evidence regarding parallel positions, nor has the petitioner established that the particular position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. There is no evidence in the record that would show that the proffered position's duties rise to the level of an accountant. Consequently, the petitioner fails to establish 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 petitioner will employ the beneficiary in 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.