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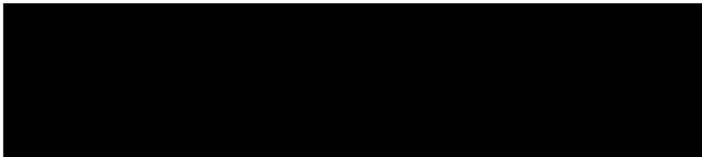
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: EAC 07 130 51147 Office: VERMONT SERVICE CENTER Date: OCT 05 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew

Chief, 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 petitioner does business in apparel and gift retail. In order to employ the beneficiary in what the petitioner designates as an accountant position, the petitioner seeks 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 based his denial of the petition upon his determination that the evidence of record fails to establish the proffered position as a specialty occupation. On appeal, counsel argues that the director's decision to deny the petition is based upon misapplication of the regulations to the evidence of record, and a misunderstanding of the expanse of the accountant occupation as discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. In support of the appeal, counsel submits a brief; a letter from the Chairman of the Accounting Department of the University of Texas at Arlington (hereinafter referred to as the accounting professor's letter); and excerpts from the *Handbook*.

As will be discussed below, the AAO finds that the director was correct in denying the petition for its failure to establish that the proffered position is a specialty occupation. The AAO bases this determination on its review of the entire record of proceeding, as supplemented by the documents submitted on appeal.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the proffered 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that

construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) (hereinafter referred to as *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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.

Before discussing application of the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence of record, the AAO will address the import of the *Handbook*; the generalized level of the information that the petitioner has provided about the proffered position; and the negligible weight that the AAO accords to the accounting professor’s letter.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ As will now be discussed, the *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor’s degree, or the equivalent, in a specific specialty.

The “Accountants and Auditors” chapter at the 2008-2009 edition of the *Handbook* indicates that not every accountant position requires or is usually associated with at least a bachelor’s degree level of knowledge in accounting or a related specialty.

The introduction to the “Training, Other Qualifications, and Advancement” section of the *Handbook* states that “[m]ost accountants and auditors need at least a bachelor’s degree in business, accounting, or a related field.” This does not support the view that any accountant job qualifies as a specialty occupation. “Most” is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor’s degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R.

¹ All references are to the 2008-2009 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

§ 214.2(h)(4)(iii)(A)(4).² As the generalized duties provided in the present record accord most closely with the *Handbook's* Management Accountant occupational category, this excerpt about certification is most instructive, as it indicates that a degree in a specific specialty is not normally a requirement for certification as a management accountant by the Institute of Management Accountants:

The Institute of Management Accountants confers the Certified Management Accountant (CMA) designation upon applicants who complete a bachelor's degree or who attain a minimum score or higher on specified graduate school entrance exams. Applicants must have worked at least 2 years in management accounting, pass a four-part examination, agree to meet continuing education requirements, and comply with standards of professional conduct. The exam covers areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management.

Further, the AAO finds that the application process described at the Internet site of the Institute of Management Accountants, www.imanet.org, does not specify a degree in a specific specialty as a requirement for CMA certification.³ Consequently, qualifying this petition's particular accountant position as a specialty occupation depends upon the evidence of record regarding the services that the beneficiary will likely perform.

The AAO finds that the record's evidence about the work in which the beneficiary would engage is limited to generalized descriptions of generic accounting functions. For instance, the pertinent part of the petitioner's owner's "Non-technical Description of the Job" for Part 5 of the H Classification Supplement to the Form I-129" states:

The position that is being offered to [the beneficiary] is that of Accountant. In this capacity, he will apply principles of accounting to analyze financial information and prepare financial reports. He will compile and analyze financial information to prepare entries to accounts and to document business transactions. He will also analyze financial information detailing assets, liabilities, and capital. [The beneficiary] will prepare balance sheets, profit and loss statements, and other reports to summarize [the] current and projected company financial position. He will continue to enter deposit and accounts payable information into accounting software. He will maintain adequate bank balances to cover checks processed and to reconcile all checking accounts.

² For instance, the first definition of "most" in *Websters's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree."

³ This Internet site is listed in the "Sources of Additional Information" section at the end of the *Handbook's* "Accountants and Auditors" chapter as one of the sources of information about accredited accounting programs.

The AAO notes that the petitioner has not provided any concrete or substantive information about the types of financial information that the beneficiary would analyze; the nature of the analysis that the beneficiary would apply to that information; and the type of financial reports that the beneficiary would prepare. Nor does the petitioner provide any detailed information about, or documentary examples of, the assets, liabilities, and capital that the beneficiary would analyze. Further, without more information, the AAO cannot reasonably deduce the particular level of accounting knowledge required to prepare balance sheets, profit and loss statements, and “other reports” about the petitioner’s financial position and to maintain adequate bank balances.

The AAO notes the petitioner’s assertions that it has expanded its operations to three different retail ventures at three different sites; that it is currently renovating operating space to open two new restaurants; that it is planning “remodeling of a boutique hotel soon after”; and that “the renovation projects have created accounting, budgetary and other business management issues that neither of us are qualified to handle.” However, while these assertions offer some explanation of the petitioner’s desire to hire the beneficiary, they shed no light on the substantive nature of the work that the beneficiary would perform. The assertions have no probative value, as they are not supplemented by documentation conveying their factual basis. 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)). Further, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO finds that the need for a specialty degree is not inherently evident in counsel’s descriptions of the duties comprising the proffered position. They comprise a skeletal outline of broad functions stated in exclusively generalized and generic terms. There is no attempt to provide a meaningful description of the scope and complexity of matters upon which the beneficiary would work or to explain how specific aspects of the work would require a person with at least a bachelor’s degree in a specific specialty closely related to that type of work. To determine whether a particular job qualifies as a specialty occupation, USCIS focuses on the record’s evidence of specific work involved in actual performance of the job. *See generally Defensor*, 201 F.3d 384. If the evidence of record fails to develop the performance aspects of the proffered position in terms sufficiently detailed to manifest that they involve the application of at least a bachelor’s degree level of knowledge in a specific specialty, the petition will fail to establish a specialty occupation. Such is the case here.

Next, the AAO will explain why the accounting professor’s letter has negligible evidentiary value. The professor states that he bases his opinion upon “the job description of accountant, as provided by [the petitioner].” The professor, however, does not quote that job description; does not provide document identifiers by which the AAO would be able to determine if the job description upon which the professor relies comports with the evidence that the petitioner has submitted into the record; and does

not provide a copy of the job description upon which he relies. The AAO therefore finds the professor's letter materially incomplete, as it does not provide the information upon which the professor based his opinion. Therefore, the letter lacks an adequate factual foundation to support its conclusions. For this reason alone, the professor's letter merits little to no weight. However, there are other, equally compelling reasons for discounting the professor's opinion. The professor states, without supporting documentation or references to supportive publications, and in apparent conflict with the *Handbook's* chapter on Accountants, that "a bachelor's degree is viewed as a minimal threshold by any competent employer considering hiring someone to discharge even the most basic accounting tasks." Thus, the professor's opinion is based partly on a conclusion for which he provides no authoritative support. The AAO further notes that the professor's section on the need for a course in a college-level course in Advanced Accounting indicates a perception for which there is no basis in the record of proceedings, namely, that the proffered position includes "intercorporate transactions and events." USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Aside from the *Handbook's* information, this record's lack of substantive evidence about the particular matters upon which the beneficiary would work and the educational level of both theoretical and practical knowledge that would be required to apply them precludes the AAO from reasonably determining that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a particular 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.

The record's descriptions of the duties comprising the proffered position generally comport with the accountant occupation as discussed in the "Accountants and Auditors" chapter of the 2008-2009 edition of the *Handbook*. However, neither those descriptions nor any other evidence of record distinguish the proffered position from the range of accountant jobs, indicated by the *Handbook*, which do not require at least a bachelor's degree or the equivalent in a specific specialty closely related to their duties. Given the lack of evidence regarding the substantive nature of the accounting duties proposed for the beneficiary, the petitioner has failed to establish both the substantive nature of the actual services that the beneficiary would perform and the nature and educational level of knowledge required to perform them.

Next, the AAO finds that the petitioner has not satisfied the first of the two 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 whose asserted requirement for at least a bachelor's degree in a specific specialty is common to positions in the

petitioner's industry 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 USCIS 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 here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a U.S bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

As reflected in this decision's earlier comments about the *Handbook's* chapter "Accountants and Auditors," the *Handbook* does not indicate that the proffered accountant position, as so generally described in this petition, would require at least a bachelor's degree in a specific specialty. Thus, the *Handbook* does not support a favorable finding under this criterion. The AAO also notes that the record does not include submissions from a professional association or from individuals or other firms in the petitioner's industry attesting to routine employment and recruiting practices.

As the evidence of record does not establish a bachelor's degree or higher in a specific specialty as an industry-wide requirement for positions substantially similar to the one proffered in this petition, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not develop relative complexity or uniqueness as an aspect of the position. Rather, as earlier discussed, the evidence about this petition's particular position is limited to generalized functional descriptions that do not distinguish the position by complexity or uniqueness.

Next, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), for establishing a specialty occupation through the petitioner's recruiting and hiring history for the proffered position, is not a factor in this proceeding. The petitioner has never before employed a person in the proffered position,

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved 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. As reflected in the earlier discussion of the evidence regarding the proposed duties, they have not been described with sufficient specificity to convey whatever level of specialization and complexity may reside in them. Accordingly, there is no basis for the AAO to find the degree association required by this criterion.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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