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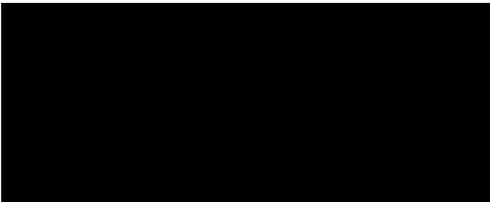
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FILE: WAC 04 020 53201 Office: CALIFORNIA SERVICE CENTER Date: FEB 16 2005

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, 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 retail shoe chain that 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 monitoring, correcting, and verifying daily transactions of accounts payable and accounts receivable; overseeing and posting inventory transactions; gathering information to prepare monthly reports such as operating statements and balance sheets; assisting the controller in preparing bank reconciliation for general, payroll, and bank accounts; gathering monthly actuals and accruals, and adjusting journal entries in the general ledger; posting month-end and year-end closing journal entries before closing the general ledger; analyzing the monthly actual/budget variations for sales and general expenses; verifying and posting the biweekly inventory data in the general ledger; reconciling the monthly inventory valuation report and accounts receivable and accounts payable aging reports; monitoring month-end closing for shipped/not received, disputed, and in-transit inventory transfers and adjustments; establishing new and modifying existing general ledger accounts and templates for financial statements, trial balance, departments, and branch expense reports; assisting the controller and branch managers in preparing annual budget reports; and coordinating with the management information system (MIS) department to set up new financial reports and improve existing ones. The petitioner stated that a candidate must possess a bachelor's degree in accounting, business administration, or a related field, and have one year of experience.

The director determined that the proffered position was not a specialty occupation. According to the director, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proffered position's duties resembled those of a bookkeeping, accounting, and auditing clerk, occupations that do not require a bachelor's degree. The director stated that when determining whether a titled position is a specialty occupation the actual duties to be performed are determinative, not the title. The director noted that the petitioner failed to submit the requested evidence of the beneficiary's qualifications.

On appeal, counsel states that the proffered position is that of an accountant, a specialty occupation. Counsel contends that the petitioner employs clerks and bookkeepers whose tasks differ from an accountant. According to counsel, the proffered position's core duties are encompassed in the *Handbook's* and the *Dictionary of Occupational Titles' (DOT)* description of an accountant. Counsel states that the submitted job listings require at least a baccalaureate degree and experience. Counsel emphasizes that the petitioner's business operation is not small: it grossed \$42 million and has regional accountants working under a controller. Finally, counsel claims that the petitioner submitted all requested evidence.

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 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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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)).

As previously mentioned, 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. In the October 13, 2003 letter, the petitioner indicated that a candidate for the proffered position must possess a baccalaureate degree in accounting, business administration, or a related field. This educational requirement fails to establish that the proffered position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

In this case, because the petitioner accepts candidates possessing a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position, accountant. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Given that the petitioner accepts a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration, it cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner accepts candidates holding a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show 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 in a specific specialty. Once again, the petitioner accepts candidates with a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration.

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.