

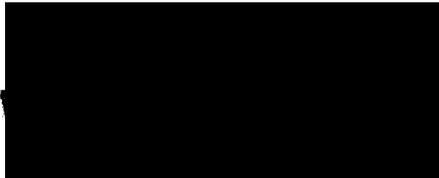
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**U.S. Citizenship  
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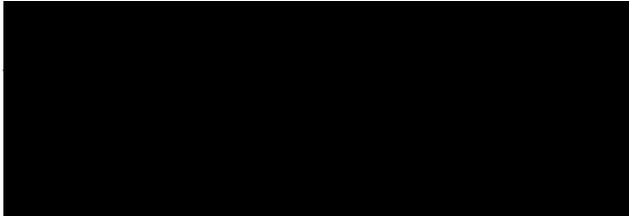
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FILE: WAC 02 147 51290 Office: CALIFORNIA SERVICE CENTER Date: **FEB 25 2005**

IN RE: Petitioner:   
Beneficiary:

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 wholesaler and retail distributor of automobile brake parts that seeks to employ the beneficiary as a budget analyst. 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 beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits 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 a budget analyst. The petitioner's March 15, 2002 letter described the duties of the proffered position, and indicated that a candidate must possess a baccalaureate degree "in majors that consist of accounting, finance, business administration, marketing[,] and economic type courses."

The director determined that the beneficiary was not qualified for the proffered position. Citing the court's decision in *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968), the director stated that the beneficiary possesses the equivalent to a baccalaureate degree in business administration which is insufficient to qualify the beneficiary as a member of the professions or for a specialty occupation. According to the director, the petitioner failed to show that the beneficiary's academic coursework is a realistic prerequisite for the proffered position.

In the appeal brief, counsel contends that the beneficiary is qualified for the proffered position. Counsel refers to two credentials evaluations to state that the beneficiary possesses the equivalent of a baccalaureate degree in business administration with a major in accounting.

Upon review of the record, the AAO disagrees with the director's implicit determination that the proffered position is a specialty occupation. 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.

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 March 15, 2002 letter, the petitioner indicated that a candidate for the proffered position must possess a baccalaureate degree "in majors that consist of accounting, finance, business administration, marketing[,] and economic type courses." 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 bachelor's 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 bachelor's 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 bachelor's 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 AAO notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate.

The director found that the beneficiary was not qualified for the proffered position. There is insufficient evidence in the record to establish that the beneficiary is qualified for the proffered position. The two educational evaluations concluded that the beneficiary possesses the equivalent to a U.S. bachelor's degree in business administration with a major in accounting. However, neither evaluator attaches authorities to support their conclusion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the evaluator's conclusions appear to be based on a combination of the beneficiary's education and work experience. CIS will only accept the conclusions of the evaluator who analyzes the beneficiary's educational equivalence under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) when the educator is an official who has authority to grant college level credit for training or experience.

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.