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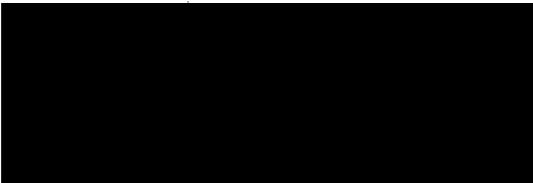


FILE: LIN 03 203 50337 Office: NEBRASKA SERVICE CENTER Date: **MAR 22 2005**

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 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 a management consulting firm and seeks to employ the beneficiary as an accounts analyst. 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 proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accounts analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: manage financial systems used for compiling and analyzing financial information for accounts payable, accounts receivable, invoicing, inventory control and taxation; develop the accounting system to automate accounting practices to permit the detailing of assets, liabilities, and capital to prepare financial reports, in the English and Japanese languages, on both a monthly and annual basis summarizing current and projected company financial position to management and the petitioner's parent company; have daily contact with the petitioner and banks regarding various financial issues; develop a financial system to allow for the electronic transfer of funds from the petitioner's parent company; and communicate with computer and accounting personnel from the petitioner's parent company. The petitioner requires a minimum of a bachelor's degree in accounting, management of information systems, business administration, management or a related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though somewhat vaguely defined, are varied and appear to be essentially those noted for bookkeepers, accounting or financial clerks, with duties also performed by translators and systems analysts. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . .

In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

....

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

. . . .

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

A portion of the position's duties fall within those listed above. As described by the petitioner, the duties do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, bookkeepers, accounting and financial clerks routinely: manage accounting systems for the detailing of accounts payable, accounts receivable, invoicing, inventory control, and taxation; develop automated systems; handle banking tasks; and transfer funds. Thus, it cannot be concluded that the duties of the proffered position involve the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* further notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping.

The beneficiary would also prepare financial reports in English for the petitioner, and then translate those reports into Japanese for the petitioner's parent corporation. Interpreters and translators enable cross-cultural communication by converting one language into another. They relay concepts and ideas between languages and must thoroughly understand the subject matter in which they work so that they are able to convert information from one language into another. The *Handbook* notes that while the educational backgrounds of interpreters and translators vary, a bachelor's degree is almost always required. A degree in a specific specialty, however, is not required. Knowledge of a language in addition to a native language is a given, but beyond that, there are many educational options. Interpreters and translators note that it is acceptable to major in something other than a language in order to successfully perform the duties of the position. Specialized training in how to do the work is also generally required. It is, therefore, apparent that a degree in a specific specialty is not a minimum requirement for entry into the proffered position as interpreters and translators may come from a variety of educational disciplines.

The beneficiary is also required to develop a financial system to allow for the automation of accounting systems and the electronic transfer of funds from the petitioner's parent company. These duties involve some functions performed by systems analysts who solve computer problems and apply computer technology to meet the individual needs of an organization. These analysts may also plan and develop new computer systems, or devise ways to apply existing systems' resources to additional operations. The *Handbook* states that there is no universal way to prepare for a job as a systems analyst. A bachelor's degree is a prerequisite for many jobs; however, some jobs require only a two-year degree. Based on the foregoing, the petitioner has

failed to establish that any of position's duties require a minimum of a bachelor's degree in a specific specialty for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and that it normally requires a degree for the offered position, but offers no evidence in this regard. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the duties of the proffered position appear to be routine for bookkeeper, accounting and financial clerks, interpreters/translators, and systems analysts. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Indeed, the petitioner noted in its letter of June 10, 2003 that it found acceptable for the proffered position an individual with degrees in various business disciplines as well as a degree in management of information systems (MIS). An MIS degree is not closely related to degrees in accounting or business administration. It is, therefore, apparent that the petitioner itself does not require a degree in a specific specialty for entry into the offered position. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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