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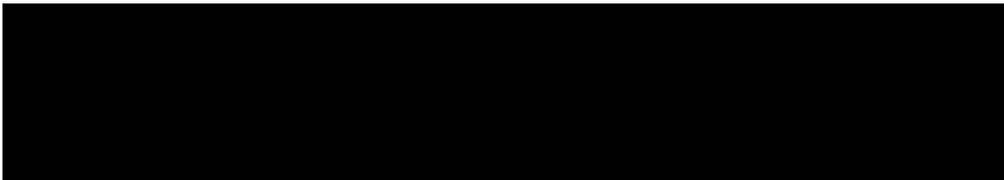
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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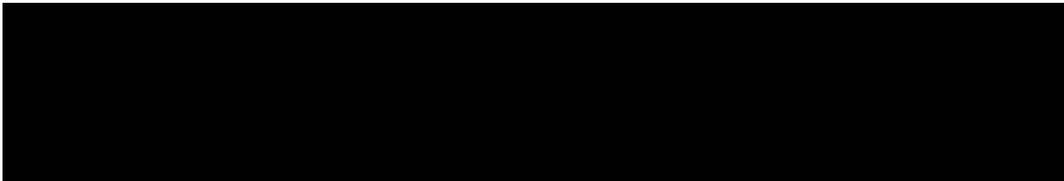
FILE: WAC 06 277 51840 Office: CALIFORNIA SERVICE CENTER Date: MAR 14 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a floral and gift shop. The petitioner claims on the Form I-129 that it employs 14 personnel and has a gross annual income of \$309,512. It seeks to employ the beneficiary as an accounts payable supervisor. Accordingly, 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 determining that the position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed September 20, 2006 and supporting documentation; (2) the director's November 28, 2006 request for further evidence (RFE); (3) the petitioner's February 7, 2007 response to the director's RFE; (4) the director's June 12, 2007 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 issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

CIS interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as an accounts payable supervisor. In a July 29, 2006 letter appended to the petition, the petitioner stated that the beneficiary's duties as accounts payable supervisor included:

- Supervises and coordinates activities of Accounts Payable Department Staff;
- Review[s] vouchers, employee expense reports and petty cash transactions making sure entries are in compliance with GAAP and FAR;
- Investigate[s] past due invoices claimed by vendors to substantiate accuracy of the claim prior to settlements;
- Review[s] open A/P report and determine[s] the persons to be paid for the week's check disbursements processing;
- Compile[s] and analyze[s] financial information as it relates to the general ledger accounts and prepare[s] necessary adjusting journal entries using accounting spreadsheet and word processing software, prepare[s] reports and maintain[s] information related to accounts payable.

In a February 7, 2007 response to the director's RFE, the petitioner stated:

The duties of the Accounts Payable Supervisor are so complex and unique like analyzing financial information; reviewing checks and post[ing] all accounts payable transactions on a daily basis, making sure that all liabilities are properly recorded in accordance with generally accepted accounting principles and that payments are appropriately coded, authorized and paid on a timely basis; develop[ing], implement[ing], maintain[ing] systematic filing and disposal of all accounts payable records and documents assuring their proper safekeeping, facilitating their easy retrieval, and safeguarding their confidentiality.

The petitioner added a list of duties with the approximate allocation of time to each group of duties. The petitioner indicated the beneficiary would spend 50 percent of her time performing the following duties:

Supervise[s] and coordinate[s] activities of the sales person and sometimes also act[s] as Accounts payable staff, review[s] vouchers, employee expense reports and petty cash transactions making sure that entries are in compliance with GAAP and FAR.

Review[s], checks and posts all accounts payable transactions on a daily basis and ensure[s] that all liabilities are properly recorded and payment thereof are appropriately coded, authorized and paid on a timely basis.

Compile[s] and analyze[s] financial information as it relates to the general ledger accounts and prepare[s] necessary adjusting journal entries using accounting spreadsheet and word processing software.

Develop[s] adequate, effective, efficient and workable Accounts Payable policies, systems and procedures.

Develop[s], implement[s] and maintain[s] a systematic filing and disposal of all accounts payable records and documents that will ensure their proper safekeeping, facilitate their easy retrieval and likewise safeguard their confidentiality.

Investigate[s] past due invoices claimed by vendors to substantiate accuracy of the claim prior to settlements.

Submit[s] relevant account reports to the owner.

The petitioner added that the beneficiary would spend 35 percent of her time performing the following duties:

Provide[s] accurate and timely reports, schedules and returns to support invoices and payment processing.

Process[es] payment advise [sic] to all creditors, suppliers and government related agencies on a timely basis, appropriately code and authorized procedures [sic].

[Sees that] [b]ooks of accounts pertaining to accounts payable are accurately maintained and regularly updated in accordance with the prescribed policies, systems and procedures.

Prepare[s] weekly disbursement reports.

Assist[s] in the month-end preparation of financial reports.

The petitioner stated that the beneficiary would spend the remaining 15 percent of her time providing the following services:

Provide[s] accurate, reliable and timely reconciliation of all payable accounts sets.
Ensure[s] staff awareness on the importance of documents receiving and handling function.
Perform[s] other tasks that may be assigned by the owner.

The petitioner provided a copy of its organizational chart depicting the beneficiary in the position of part-time accounts payable supervisor and showed the accounts payable supervisor position over two sales positions, two drivers, and a designer and part-time designer. The organizational chart also depicted the same organizational hierarchy with different personnel in the listed positions for a separate location. The petitioner also submitted copies of the beneficiary's pay stubs.

On June 12, 2007, the director denied the petition, determining that the duties of the proffered position corresponded to the duties of an advanced accounting clerk as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* and that such a position is not an occupation that requires a baccalaureate level of education in a specific specialty as a normal, minimum requirement for entry into the occupation. The director noted that in response to the RFE, the petitioner added that the beneficiary would supervise the activities of a salesperson and also sometimes act as the accounts payable staff. The director found that the information in the record did not substantiate: that a baccalaureate or higher degree is normally the minimum requirement for entry into the position; that a degree requirement is common to the industry in parallel positions among similar organizations; that the employer normally required a degree or its equivalent to perform the duties of the position; or that 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. The director concluded that the proffered position does not meet any of the criteria for classification as a specialty occupation.

On appeal, counsel for the petitioner indicates that CIS previously determined that the position of accounts payable supervisor is a specialty occupation when it granted the beneficiary the classification of an H-1B nonimmigrant. Counsel also submits a July 3, 2007 position evaluation authored by ██████████ Adjunct Professor at Embry-Riddle Aeronautical University in Fort Lauderdale, Florida. ██████████ opines: "the position of Accounts Payable Supervisor at [the petitioner] would require a Bachelor's degree in Business Administration, Accounting or a related subject to adequately perform the complex duties required for the position." ██████████ bases his opinion upon the list of job responsibilities initially provided by the petitioner to CIS. Counsel further asserts that the petitioner firmly believes that a degree is necessary to perform the duties of the position.

Counsel's assertions are not persuasive. Preliminarily, the AAO acknowledges that the beneficiary was previously accorded H-1B classification when employed by the petitioner at a different shop location. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior decision. However, if that record contained the same evidence as is submitted with this petition, the CIS would have erred in approving the previously filed petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of*

Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Turning to the merits of this petition, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. One of the factors considered by the AAO when determining this criterion includes whether the Department of Labor's *Handbook* reports that the industry requires a degree. The 2006-2007 edition of the *Handbook* discusses the occupation of an accounts payable clerk in the section on Bookkeeping, Accounting, and Auditing Clerks. The *Handbook* reports that titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting tasks the individual will perform. The *Handbook* indicates:

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete and they may reconcile computer reports with operating reports.

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position. The AAO notes that the petitioner indicates in its response to the RFE that the individual in the proffered position will sometimes act as the accounts payable staff, an implication that the beneficiary will not always act as a supervisor. This acknowledgment of the beneficiary's daily duties is also implied on the petitioner's organizational chart which does not depict any positions of accounting clerks. The AAO also acknowledges the petitioner's indication in response to the director's RFE, that the individual in the proffered position will have supervisory or managerial duties. The petitioner's organizational chart also indicates the individual in the proffered position will have some responsibility of supervising sales clerks. The AAO notes that supervision of sales clerks is not a duty routinely associated with an accounts payable supervisor. Moreover, the petitioner does not detail any of the duties associated with supervising sales clerks, thus there is insufficient evidence to establish that the proffered position is a supervisory sales position.¹ Further, the petitioner's addition of supervisory duties of positions not associated with accounts payable clerk is a material change to the initially proffered position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *See e.g. Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

¹ Upon review of the *Handbook's* discussion of sales worker supervisors, the AAO finds that the educational requirements for a sales worker supervisor's position vary widely and do not require a bachelor's or higher degree in a specific discipline for entry into the position. Thus, a sales worker supervisor position is not a specialty occupation.

The *Handbook's* discussion of the occupation of an advanced accounting clerk, the position most similar to the evidence of record regarding the proffered position, indicates:

Most bookkeeping, accounting, and auditing clerks are required to have a high school diploma at a minimum. However, having some college is increasingly important and an associate degree in business or accounting is required for some positions. Although a college degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular company or to enter the accounting or finance field with the hope of eventually being promoted to a professional or managerial position.

* * *

Most companies fill office and administrative support supervisory and managerial positions by promoting individuals from within their organizations, so clerks who acquire additional skills, experience, and training improve their advancement opportunities.

The AAO has also considered the July 3, 2007 "Professional Position Evaluation Report" authored by Dr. [REDACTED]. [REDACTED]'s report is insufficient to establish that the proffered position is a specialty occupation. Although [REDACTED] states that it is his opinion: "the position of Accounts Payable Supervisor at [the petitioner] would require a Bachelor's degree in Business Administration, Accounting or a related subject to adequately perform the complex duties required for the position," [REDACTED]'s opinion is not supported by an adequate factual foundation. [REDACTED] indicates he reviewed the same description of job responsibilities as initially submitted with the petition. The AAO respectfully disagrees that this general description comprises the duties of a specialty occupation. As referenced above, the petitioner provides a description of duties performed by an accounts payable clerk, an occupation that is not a specialty occupation. [REDACTED]'s report does not provide sufficient details about the complexity of the petitioner's accounts payable or any other evidence that the job duties in this particular matter would normally require a minimum of a baccalaureate or higher degree for entry into the occupation. [REDACTED] does not provide evidence of objective surveys or other independent information that would substantiate his conclusion that an accounts payable clerk or supervisor would require a bachelor's degree in business administration or accounting or a related field. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Moreover, the record does not establish [REDACTED]'s authority to speak to the national hiring practices of U.S. employers. The AAO notes that [REDACTED]'s expertise is in evaluating educational requirements to determine if the education or experience of individuals compares with a U.S. degree and his specific area of expertise is business administration and related fields. The AAO acknowledges [REDACTED]'s ten-years of experience as an accountant, but this experience and expertise does not demonstrate that he is knowledgeable about national hiring practices. [REDACTED] does not include the results of formal surveys, research, statistics, or any other objective quantifying information to substantiate his opinion. 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)). The *Handbook*, however, offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. [REDACTED]'s opinion is based in part on the petitioner's general description of the job responsibilities, a description that corresponds to that of an accounts payable clerk, an occupation that does not require a college degree in a specific discipline. In addition his opinion is conclusory and does not provide a factual basis to support his opinion that the duties of the position are complex. [REDACTED]'s opinion is insufficient to overcome the *Handbook's* report that an accounting payable clerk or supervisory position requires an individual with a bachelor's or higher degree in a specific discipline to perform the duties of such a position.

The petitioner has not established that the proffered position as described is a position that would normally require a baccalaureate or higher degree or its equivalent for entry into the particular specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 the instant matter, the petitioner has not submitted evidence of an industry standard for the position of accounts payable supervisor.

The AAO again acknowledges [REDACTED]'s position evaluation submitted on appeal; again, [REDACTED]'s opinion is conclusory and other than reviewing the job duties, job duties provided generally for any position that may require some basic knowledge of accounting principles, [REDACTED] does not relate the duties to the petitioner's particular financial situation. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The record does not contain sufficient evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. Again, the conclusory opinion of [REDACTED] does not establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. Further, the petitioner has not provided evidence that the proffered position incorporates duties that require an advanced analysis of complex and intricate principles, but rather has described the routine tasks of a general accounting clerk who is not required to have a four-year degree. The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and, therefore, is unable to establish the proffered position as a

specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

To determine whether a proffered position may be qualified as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Although the petitioner indicates that the beneficiary in this matter has been previously employed in a similar position in an H-1B classification at a different location, as referenced above, approval of a similar position for an H-1B classification appears to have been in error. The AAO acknowledges the petitioner's desire to employ an individual with a college degree in this position, but an employer's self-imposed standard is not the critical element; rather the critical element is whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. In this matter it does not. Moreover, if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The AAO finds that the petitioner has not provided evidence substantiating that the proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge; thus, the petitioner has not established the position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by an accounts payable clerk. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of an accounts payable clerk. [REDACTED]'s report fails to provide sufficient details about the complexity of the duties in relation to the petitioner's flower shop to substantiate his conclusion that the position would require a bachelor's degree in a specific discipline to adequately perform the position. Again, there is an inadequate factual foundation to support the opinion. The AAO finds that the opinion is not in accord with other information and does not accept the opinion as evidence. *Matter of Caron International*, 19 I&N Dec. at 791. As a result, the record also fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed.

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.