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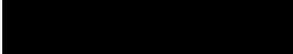
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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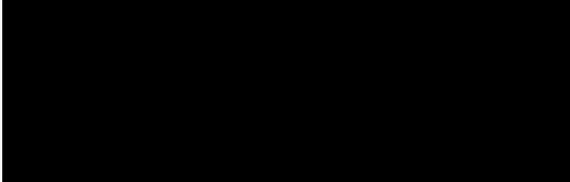


FILE:  Office: CALIFORNIA SERVICE CENTER Date: APR 11 2005

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.

*for* *Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the California 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 states it is a manufacturer of fabrics and a wholesaler to clothing manufacturers in California. It seeks to employ the beneficiary as an accountant. The director denied the petition because he determined the proffered position did not meet the criteria required for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response; and (4) Form I-290B, with a letter from the petitioner. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's 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.

Citizenship and Immigration Services (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 (5<sup>th</sup> 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 accountant. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's July 28, 2003 letter of support; and its December 22, 2003 response to the director's request for evidence.

In its letter of support, as well as in its response to the director's request for evidence, the petitioner described the specific duties to be performed by the beneficiary as follows:

- Provide a variety of financial, statistical, analytical and narrative reports;
- Provide specialized accounting for the maintenance, control and reporting of revenues, expenditures, assets, liabilities, equities and payroll;
- Interpret and analyze financial operations and transactions;
- Resolve problems and discrepancies;
- Forecast trends and develop special complex reports and analyses for management;
- Make recommendations for asset utilization and expenditure control;
- Maintain key fund ledgers;
- Design complex accounting and database applications for personal computers;
- Prepare annual budget and income projections;
- Advise management on cash flow projections and budgetary status;
- Monitor and maintain appropriate revenue levels and oversee major liability accounts;
- Keep abreast of current developments in accounting and auditing professions and changes in local, state and federal laws, as applicable; and
- Devote time in implementing a system that will be available to management and accountant(s) needed and hired in future.

In his denial, the director found that a large percentage of the beneficiary's time would be spent on bookkeeping duties, which did not have the complexity or scope of responsibility normally required of an accountant. He, therefore, concluded that, as all the duties of the proffered position were not those performed by accountants, the petitioner's employment could be performed by an experienced individual without a baccalaureate degree. The AAO does not agree with this analysis. The director erred in concluding that all of the duties of the proffered position must fall within a specialty occupation for a position to impose a degree

requirement on a beneficiary. If the performance of any of the duties of a proffered position requires a beneficiary to hold a baccalaureate or higher degree, or its equivalent, then the position is established as a specialty occupation.

On appeal, the petitioner claims that the duties of its position are “completely in alignment with the duties described in the [Handbook] for management accountants.” As discussed on pages 68-69 of the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

While the AAO does not find the petitioner’s description of the duties of the proffered position to be in complete alignment with the above discussion, it does find it to include activities performed by management accountants. However, the petitioner’s discussion of these duties is so generic, so nonspecific that it describes the occupation of accountant rather than the proffered position for which it is seeking the beneficiary’s services. A petitioner cannot establish its employment as a specialty occupation by listing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title. While this type of generalized description is necessary when defining the range of duties that may be performed within an occupation, it cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties or tasks to be performed by a beneficiary in relation to its particular business interests.

The duties of the proffered position, highlighted by the petitioner on appeal as those linking its employment to the above description, include “prepare a variety of financial, statistical, analytical and narrative reports”, “interpret and analyze financial operations and transactions,” “make recommendations for asset utilization and expenditures control”, “prepare annual budget and income projections,” and “advise management on cash flow projections and budgetary status.” Such a description precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis, and, therefore, whether these responsibilities must be performed by an accountant. The AAO notes that the petitioner’s description of the remaining duties of the proffered position is also characterized by the same type of generic language just noted, e.g., “resolve problems and discrepancies” and “provide specialized accounting for the maintenance, control and reporting of revenues, expenditures, assets, liabilities, equities and payroll.”

Without a reliable description of the proffered position’s duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation -- employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Accordingly, the AAO finds the petitioner to be unable to establish that its position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner has submitted an expert opinion from a university professor who has found the proffered position to be that of an accountant and to require the minimum of a bachelor's degree in accounting. The professor has further concluded that such a position would normally require a baccalaureate degree within the petitioner's industry.

The professor's opinion is relevant, but not persuasive.

The opinion lacks an adequate factual foundation, as the professor based it upon the petitioner's generic and generalized duty descriptions, which, as already noted, do not convey any specific tasks that would require the application of at least a bachelor's degree level of accounting knowledge. The professor also stated that he has considered "parallel positions among similar organizations, but he did not identify any of those organizations, explain how he concluded that their educational requirements were the same as the petitioner's, or present the content of that consideration.

The opinion also lacks meaningful analysis. For instance, the professor does not explain how he concluded that the petitioner's generic and generalized descriptions of general duties establish that performance of the underlying tasks requires at least a bachelor's degree in a specific specialty.

Where an expert's opinion is not in accord with other information or is in any way questionable, CIS may discount or give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO has considered the professor's opinion but, for the reasons discussed above, determined that it carries little evidentiary weight.

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO, although it disagrees with the director's analysis of the proffered position, 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.