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FILE: WAC 04 071 50342 Office: CALIFORNIA SERVICE CENTER Date: AUG 08 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 dental office that seeks to employ the beneficiary as a financial office manager. 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 is not 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 financial office manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 12, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing payables and receivables and payroll; coordinating collections and statements; budgeting analysis; financial evaluation of dental procedures; treatment coordination; verifying insurance and eligibility; and developing long-term marketing and advertising strategies. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in finance, accounting or marketing.

The director found that the proffered position was not a specialty occupation because the job is not a financial office manager position; it is a combination of a dental assistant and an office manager. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into these positions was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the duties of the proffered position are different from those of a medical assistant, and that the petitioner already has staff performing the duties of a medical assistant. Counsel further states that the director was incorrect in stating that the petitioner had submitted three letters, rather than four, from other dental offices supporting the petitioner's contention that the position is a specialty occupation. Counsel asserts that while the director was correct in stating that the letters did not state the specific specialty required for the position, the *Handbook* clearly states that a bachelor's degree in finance, accounting or a related field is the minimum requirement for a financial manager position.

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 turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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.

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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO agrees with counsel that the position is not like dental assistant, but does not concur that it is a financial manager. The *Handbook* indicates that the duties of a financial manager are at a much higher level than the duties of the proffered position, and that they "often work on teams, acting as business

advisors to top management.” None of the information in the *Handbook* reflects the nature of the proffered position.

The position is a combination of a marketing manager and a bookkeeper. Forty percent of the duties of the proffered position are in marketing and advertising. The *Handbook* clearly indicates that although a bachelor’s degree is typically required for positions in this field, a wide range of specialties would be adequate preparation. As there is no requirement of a degree in a specific specialty, marketing and advertising managers are not considered specialty occupations. The remaining duties are most like a bookkeeper, a position that handles all financial transactions and recordkeeping, according to the *Handbook*. Bookkeepers are not, however, required to have a bachelor’s degree in order to enter the field.

Regarding parallel positions in the petitioner’s industry, the petitioner submitted letters from four dental offices, all of which stated that in their experience, an individual filling a position similar to the proffered position must have a bachelor’s degree. As the director noted, none of the authors of these letters indicated that the degree would need to be in a specific specialty. Counsel argues that this is irrelevant, since the *Handbook* states the degree requirement for financial managers. As stated above, the AAO does not find that the proffered position is a financial manager. Since the letters were submitted in order to establish the standard for parallel positions, and none stated that a degree must be in a specific specialty, it can only be found that the standard does not include a degree in a specific specialty.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner’s past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. As described in the response to the director’s request for evidence, the duties of the proffered position do not appear to be so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.