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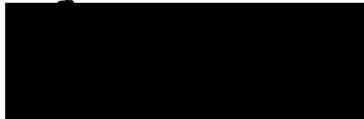
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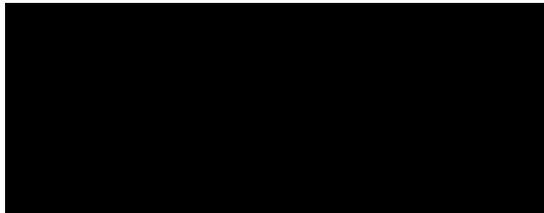
FILE: WAC 04 038 50211 Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2005

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 a wholesale and retail cosmetic company that seeks to employ the beneficiary as an accountant/assistant to the company's president. 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 an accountant/assistant to the company's president. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail compiling and analyzing financial information to prepare entries to accounts such as general ledger accounts; reconciling detailed general ledger accounts; preparing balance sheets and profit and loss statements; auditing contracts, orders, and vouchers and preparing reports to substantiate individual transactions; analyzing and developing the budget, and upon management's request, submitting reports comparing budget costs to actual costs; predicting revenues and expenditures and submitting reports to management; executing corporate policy under the president's direction and assisting the president in supervising and evaluating sales personnel. The petitioner stated that the proposed position requires a bachelor's degree in accounting or a related field.

The director stated that the submitted organizational chart did not depict a bookkeeper or account clerk position; thus, such duties would be encompassed in the proposed position. Not all businesses, the director stated, require the services of an in-house accountant. The director found the proposed position analogous to a bookkeeper as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and stated that the *Handbook* reveals that this occupation does not require a bachelor's degree. According to the director, the evidence does not indicate that the proposed position has the complexity or scope of responsibilities normally required of an accountant, or show that the offered position could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel delineates the proposed duties, submits a job description, and states that the proposed position is similar to an accountant as that occupation is described in the *Handbook*. Counsel asserts that the *Handbook* indicates that an accountant position requires a baccalaureate degree in accounting or a related field. Counsel submits evaluations from two Hofstra University professors that indicate that the offered position requires baccalaureate-level training in accounting, and that businesses of various sizes employ in-house accountants. Counsel claims that a university's academic program prepares graduates for employment with large corporations, small companies, and single office entities. Counsel also submits letters from similar employers to demonstrate that they use the services of an in-house accountant that possesses a baccalaureate degree in accounting. The director denied the petition, according to counsel, on the unfounded ground that because the organizational chart did not depict a bookkeeper or accounting clerk position the beneficiary would perform these routine duties. Counsel states that the *Handbook* reports that accounting packages greatly reduce the amount of tedious manual work associated with data management and recordkeeping. Counsel cites to two cases, one of which is *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), to show that courts have overturned the denial of petitions when based on a petitioner's size and whether the petitioner has a need for a professional.

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

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

On appeal, counsel submits a document entitled "Job Description" which changes the proposed duties from those described in the Form I-129 and accompanying documents. The petitioner's November 10, 2003 letter and document entitled "Organization Chart," for instance, do not describe the beneficiary as performing any payroll or cash management duties. However, the Job Description document depicts the beneficiary as devoting 20 percent of his time to payroll duties and 10 percent to cash management duties. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains or reconciles this inconsistency in the description of the proposed duties.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest field to the proffered position is the management accountant. The *Handbook* indicates:

Management accountants—also called cost, managerial, industrial, corporate, or private accountants—record 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.

Many of the duties described in the above passage in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities; or be involved in asset management. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

To satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits letters from [REDACTED], Inc. and [REDACTED]. The two employers are cosmetic companies similar in nature to the petitioner. In the letters, the employers attest to employing an in-house accountant with a baccalaureate degree in accounting. But in light of the inconsistencies in the petitioner's job description, which we have discussed earlier in this decision, the AAO cannot determine whether the duties of the accountants with [REDACTED], Inc. and [REDACTED] Inc. parallel those of the proposed position. Furthermore, letters from two employers are insufficient to demonstrate an industry-wide educational requirement. Consequently, the letters are insufficient to satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The submitted evidence is inadequate to satisfy the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows that the proposed position is so complex or unique that it can be performed only by a person with a degree. As we have discussed already in this decision, the proposed position does not rise to the level of an accountant as that occupation is described in the *Handbook*.

No evidence establishes that the petitioner has a historical practice of employing baccalaureate degree holders for the proffered position; thus, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Counsel cites to *Young China Daily* and another case to assert that courts have overturned the denial of petitions when based on a petitioner's size and whether the petitioner has a need for a professional. This assertion is not persuasive. The director did not base his denial on these factors; he analyzed the proposed duties and determined that the evidence indicates that they do not meet the complexity or scope of responsibility normally required of an accountant. As discussed earlier in this decision, the AAO also found that the proposed position's duties that are described in the Form I-129 and the petitioner's November 10, 2003 letter do not rise to the level of those of an accountant

as that occupation is described in the *Handbook*. Although Assistant Professor ██████████ of Hofstra University states that a baccalaureate degree in accounting or a related field is required for the proposed position, ██████████ evaluation of the proposed position is based on the document submitted on appeal that is entitled "Job Description," which materially changes the proposed position from the description in the Form I-129 and the accompanying documents. Moreover, no evidence supports ██████████ opinion (we have already explained why the letters from ██████████, Inc. and ██████████, Inc. are not persuasive in establishing a baccalaureate degree requirement). 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)). For these reasons, the petitioner fails to establish the criterion at 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 on this ground.

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.